

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Arkansas Cable Telecommunications) EB Docket No. 06-53
Association; Comcast of Arkansas, Inc.;)
Buford Communications I, L.P. d/b/a)
Alliance Communications Network;)
WEHCO Video, Inc.; and TCA Cable) EB-05-MD-004
Partners d/b/a Cox Communications,)
)
Complainants,)
)
)
v.)
)
Entergy Arkansas, Inc.,)
)
Respondent.)

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MAY - 4 2006
Federal Communication Commission
Bureau / Office

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

**MOTION TO ENLARGE, CHANGE AND DELETE ISSUES PRESENTED
IN THE HEARING DESIGNATION ORDER**

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Dated: May 4, 2006

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1. Pursuant to Section 1.229 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.229, Entergy Arkansas, Inc. ("EAI") moves to change and/or delete the issues presented in the Hearing Designation Order ("HDO") in the above-captioned case.¹ The HDO states that a hearing in this matter before an Administrative Law

¹ *Arkansas Cable Telecomms. Ass'n et al. v. Entergy Arkansas, Inc.*, Hearing Designation Order, DA 06-494 (rel. Mar. 2, 2006), Erratum (rel. Mar. 6, 2006), 71 Fed. Reg. 20105 (April 19, 2006) ("HDO"). EAI's filing of this motion should also not be construed as a concession as to the scope of the FCC's jurisdiction as to these issues. EAI fully intends to file an Application for Review at the appropriate time with respect to the HDO's statements as to the FCC's jurisdiction

Judge (ALJ) is appropriate in light of the complexity of the issues, to “examine and test” conflicting allegations and to “arrive at a just, equitable, and expeditious resolution.”² In order to attain such a resolution, and to conform with the Pole Attachments Act and past FCC decisions, the issues presented in the HDO must be amended as described herein. In support of this Motion, EAI submits the following.

I. THE ISSUE REGARDING THE COMPLIANCE OF ELECTRIC FACILITIES MUST BE REVISED TO COMPORT WITH THE FCC’S JURISDICTION UNDER THE POLE ATTACHMENTS ACT

2. The issue set forth in paragraph 18 of the HDO as Issue 4(c) is as follows:

“To determine whether Entergy has installed electric facilities out of compliance with the NESC and/or Entergy’s own standards, and if so, whether it has unreasonably attempted to hold Complainants responsible for costs associated with correcting those conditions.”³

3. As articulated, this issue is excessively broad and exceeds the scope of the jurisdictional determination made in the preceding paragraphs of the HDO, in that it requires the ALJ to make determinations related to wholly electric operations and practices outside of the scope of the FCC’s jurisdiction under the Pole Attachments Act.⁴

4. The Pole Attachments Act expressly limits the FCC’s jurisdiction to determining whether the rates, terms and conditions “for pole attachments” are just and reasonable.⁵ A “pole attachment” under this provision is any “attachment by a cable television system or provider of telecommunications services to a pole, duct, conduit, or right-of-way owned or controlled by a

over EAI’s engineering standards. *See also*, Petition for Clarification by Entergy Arkansas, Inc., EB-05-MD-004; EB Docket No. 06-53 (filed March 9, 2006).

² HDO at ¶ 6.

³ HDO at ¶ 18.

⁴ 47 U.S.C. § 224; HDO at ¶¶ 8-12.

⁵ 47 U.S.C. § 224(b).

utility.”⁶ *The plain language of the statute does not encompass the electric utility’s own electric facilities, nor does it provide general jurisdiction for the federal communications agency to assess the compliance of electric facilities with applicable safety and engineering standards. The limited scope of the Pole Attachments Act is made even more clear by its legislative history, in which Congress expressly stated that “[t]his expansion of FCC regulatory authority is strictly circumscribed.”*⁷ Thus, to the extent the Commission may exercise jurisdiction over the compliance of any installation on a pole, it may only do so with respect to attachments of cable television and telecommunications service providers.

5. The Enforcement Bureau itself recognized the limits of the FCC’s authority throughout its discussion in the HDO of its jurisdiction under Section 224.⁸ Significantly, the Bureau’s discussion addressed only its jurisdiction to determine the reasonableness of engineering standards as applied to attachers⁹ – *i.e.*, as applied to “a cable television system or provider of telecommunications service.”¹⁰ At no point in its discussion did the Bureau assert any FCC jurisdiction or authority over an electric utility’s own electric facilities, let alone the compliance of electric facilities with applicable safety and engineering standards. The language of Issue 4(c) thus exceeds the Bureau’s own stated jurisdictional boundaries.

6. At its core, the issue presented in this section is ultimately directed at determining responsibility where conditions on a given pole are non-compliant with applicable safety and engineering standards and, consequently, which party should bear the costs associated with

⁶ 47 U.S.C. § 224(a)(4).

⁷ S. Rep. No. 95-580 at 15, 1978 U.S.C.C.A.N. 109, 123.

⁸ See HDO at ¶¶ 8 – 12.

⁹ *Id.*

¹⁰ 47 U.S.C. § 224(a)(4).

correcting the conditions on that pole. Stated as such, this is an appropriate issue for review in the instant proceeding. However, as presented in the HDO, the scope of Issue 4(c) is overly broad and must therefore be revised to maintain focus on those issues that are within the Commission's jurisdiction under the Pole Attachments Act.

7. Accordingly, Issue 4(c) should be narrowed and revised to read as follows:

4(c). To determine whether Complainants' attachments are out of compliance with the NESC and/or EAI's standards, and if so, what would be a reasonable method of determining responsibility for correction.

8. This revision appropriately addresses the allegations made by Complainants while comporting with the jurisdictional boundaries established by Congress in the Pole Attachments Act and recognized by the Enforcement Bureau in paragraphs 8 – 12 of the HDO.

II. CONCLUSION

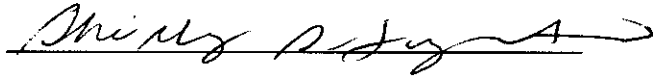
9. In order to attain a "just, equitable, and expeditious resolution" in this proceeding in accordance with the Pole Attachments Act and the Commission's rules and precedent,¹¹ the issue presented as Issue 4(c) must be amended for the reasons stated herein.

¹¹ HDO at ¶ 6.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Arkansas, Inc.

respectfully requests that the ALJ grant this Motion and reform the HDO accordingly.

Respectfully submitted,



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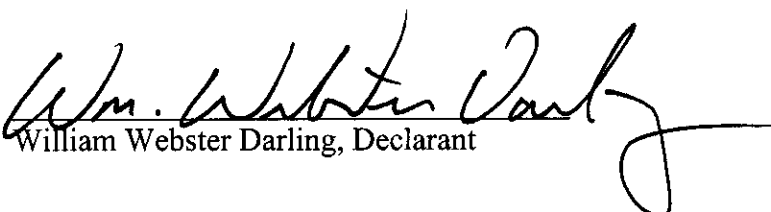
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VERIFICATION

I, William Webster Darling, pursuant to 47 C.F.R. § 1.229, hereby declare as follows:

1. I am an individual over the age of 18 and am employed by Entergy Services, Inc., a subsidiary of Entergy Corporation. As counsel to Entergy Arkansas, Inc., I am familiar with the factual matters described in the Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order. I have reviewed this Motion and the record as cited therein and, except for those facts of which official notice may be taken, to the best of my knowledge and belief, all the facts stated therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 2, 2005 at Little Rock, Arkansas


William Webster Darling, Declarant

CERTIFICATE OF SERVICE

I, David D. Rines, do hereby certify that on this 4th day of May 2006, a single copy (unless otherwise noted) of the foregoing "Motion to Enlarge, Change and Delete Issues" was delivered to the following by the method indicated:

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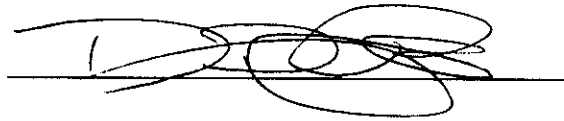
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A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.